

1 **INTRODUCTION**

2 Hoverboards were one of the “must-have” items of the holiday season of
3 2016. Plaintiff/Counter Defendant Interworks Unlimited, Inc. ("Plaintiff"), a
4 distributor of electronic goods, capitalized on the opportunity, and began selling
5 hoverboards through QVC, Inc. (“QVC”). Defendant/Counterclaimant Digital
6 Gadgets, LLC (“Defendant” or “Digital Gadgets”), who represented that they had
7 the ability to get the hoverboards into the hands of the consumers faster, purchased
8 hoverboards from Plaintiff and became indebted to the tune of over 1 million
9 dollars. When it came time to pay for the boards, the Defendant simply refused.
10 Instead of recognizing its liability and fulfilling its obligations, Defendant has
11 attempted to deflect its responsibilities by throwing in a bunch of smokescreens
12 about the Plaintiff and the hoverboards.

13 While Defendant alleged that the hoverboards were defective and the
14 Plaintiff breached the parties’ agreements, the basic premise is undeniable: this is a
15 straight forward collections case. The undisputed material facts show that the
16 Defendant ordered the goods, accepted the goods and, despite complaining that the
17 boards were no good, continued to resell and/or retain the goods. Because the
18 Defendant refused to pay for or return the goods, the Plaintiff is entitled to
19 judgment as a matter of law.

1 **I. SUMMARY OF STATEMENT OF UNCONTROVERTED FACTS**

2 In 2016, Plaintiff, a distributor of electronic goods, recognized the increasing
 3 market for hoverboards and capitalized on the lucrative opportunity by selling
 4 hoverboards called “High Roller Self Balancing Hoverboard, Model C” (“Model
 5 C” or “Hoverboard”) through QVC, Inc. (“QVC”) as a “warehouse item.”
 6 (Statement of Uncontroverted Material Facts (“SOF”) ¶¶1-3) As a “warehouse
 7 item,” Plaintiff would deliver the hoverboards to QVC, who would deliver them to
 8 the purchasing customer. (SOF ¶9) Prior to selling the hoverboards, Plaintiff was
 9 required to, and did, submit the Model C to QVC for quality testing, which the
 10 Hoverboards passed. A true and correct copy of the report is attached and
 11 incorporated hereto as Exhibit 1. (SOF ¶4) QVC, which assigns Stock Keeping
 12 Unit (“SKU”) numbers to the products it sells, assigned the Model C a SKU
 13 number of T34604 (“604”). (SOF ¶ 8)

14 Plaintiff and QVC enjoyed a successful relationship, and QVC sold the
 15 Model C hoverboards until Interworks ran out of inventory. As the holidays
 16 approached, QVC wanted to purchase more Model C’s from Plaintiff on a “drop-
 17 ship” basis. In “drop shipment,” QVC continues to sell the products, but the vendor
 18 delivers the products directly to the consumer. Plaintiff, however, did not have the
 19 ability to “drop ship” the hoverboards to QVC’s customers. (SOF ¶¶10, 11) In an
 20 effort to facilitate the drop shipment, Plaintiff decided to sell the Model C’s to
 21 Defendant, who had the ability to drop ship with QVC. (SOF ¶ 12)

22 **A. HOVERBOARD PURCHASES AND DISCOUNTS**

23 On or about December 9, 2016, Defendant ordered 4800 Model C’s from
 24 Plaintiff at \$190/unit, agreeing to pay a total of \$912,000.00, payable Net 60 Days.
 25 (SOF ¶¶14, 15) Per Defendant’s instructions, Plaintiff shipped the hoverboards to
 26 Phoenix Warehouse in the City of Santa Fe Springs in 8 separate shipments. A
 27 true and correct copy of the 8 invoices reflecting these 8 shipments are attached
 28 and incorporated hereto as Exhibit 2. A true and correct copy of the 8 picking

1 sheets reflecting the 8 separate shipments are attached and incorporated hereto as
2 Exhibit 3. And a true and correct copy of the Bills of Lading for each of the 8
3 shipments are attached and incorporated hereto as Exhibit 4. (SOF ¶¶16, 17). The
4 two parties understood that Defendant was purchasing the same exact units that
5 Plaintiff had been selling through QVC. (SOF ¶13). Defendant eventually
6 requested, and Plaintiff provided, a discount of \$30 per unit on 1,613 of the 4800
7 hoverboards, a total discount of \$48,390.00. A true and correct copy of the credit
8 memo for this discount is attached and incorporated hereto as Exhibit 5. Thus,
9 Defendant first purchased \$863,610.00 worth of Model C's. (SOF ¶18)

10 On or about December 23, 2016, Defendant ordered an additional 6000
11 Model C's, this time agreeing to pay \$215.00 each, Net 60 Days, for a total of
12 \$1,290,000. (SOF ¶19) The hoverboards were shipped to the Defendant in 5
13 separate shipments. A true and correct copy of the purchase order sent by the
14 Defendant that reflects this purchase is attached and incorporated hereto as Exhibit
15 6. A true and correct copy of the 5 invoices reflecting the original purchase price
16 are attached and incorporated hereto as Exhibit 7. (SOF ¶¶19, 21)

17 Shortly thereafter, Defendant again requested a discount. Plaintiff relented
18 providing a discount of \$55 per hoverboard. A true and correct copy of the 5
19 invoices reflecting the discounted price is attached and incorporated hereto as
20 Exhibit 8. (SOF ¶20). A true and correct copy of the 5 picking sheets reflecting the
21 5 separate shipments are attached and incorporated hereto as Exhibit 9. A true and
22 correct copy of the Bills of Lading for each of the 5 shipments are attached and
23 incorporated hereto as Exhibit 10. (SOF ¶21)

24 For the second purchase, Defendant received a total of 5808 hoverboards.
25 (SOF ¶22) While the hoverboards Digital Gadgets sold were identical to those
26 Interworks sold, since they originated from a different vendor, QVC assigned them
27 a new SKU number of T34764 ("764"). These 764 hoverboards were also
28 submitted to, and passed, QVC quality testing. (SOF ¶¶26-29)